IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8744 of 2004
with
SPECIAL CIVIL APPLICATION No.8746 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BARODA ISPAT PVT. LTD.,

Versus

RAMGOPAL M. PATEL & ORS

Appearance:
1. Special Civil Application No. 8744 of 2004
MR KM PATEL for Petitioner No. 1
NOTICE SERVED BY DS for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 09/09/2004

COMMON ORAL JUDGEMENT

One Shri S.B. Chaudhary, President of Rashtriya

Labour Union (Gujarat State) bearing Registration No.G-4742 is present before the Court and files authority letters in both these petitions which are taken on record. At the joint request of the learned advocates and the representative representing the respondent-Ramgopal M. Patel and others the matters are taken up for final hearing.

2. RULE. Shri S.B. Chaudhary, President of Rashtriya Labour Union (Gujarat State) waives service of rule.

3. These petitions are filed by two different companies, namely, Baroda Ispat Private Limited and Hy-Tuf Steels Private Limited against an order passed by the Presiding Officer, Labour Court, Vadodara, on an application-objecting to file Vakalatnama in Recovery Applications No.439 of 2004 to 551 of 2004, dated 29th June 2004. The learned Judge was pleased to uphold the objection raised by the workmen, objecting to filing of Vakalatnama by one Shri Mehulsinh Mehta, advocate on behalf of the petitioners herein. However, the learned Judge clarified that if the petitioners so choose, as provided in the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") it will be open for them to get represented and defend their case through authorised representative or to defend themselves.

4. The facts of the case are that the workmen filed the aforesaid Recovery Applications No.439 of 2004 to 551 of 2004, a copy of one such recovery application (No.439 of 2004 filed on 06.04.2004) is produced at Annexure 'B' herein. It is not in dispute that on such recovery application being filed the learned Judge was pleased to issue notice and in response thereto the petitioners appeared before the Labour Court on 18.06.2004 and the authorised signatory filed an application (Exhibit 4) praying for, 'an adjournment to enable him to engage an advocate'. It is stated by the learned advocate for the petitioners in both these petitions (as stated in para 3 of the memo of petition) that the person who is representing the respondents before this Court, namely, Shri S.B. Chaudhary, President of Rashtriya Labour Union was present before the Labour Court on 18.06.2004 and he did not object to the said application. The learned Judge was pleased to order that, 'subject to the provisions of the Act the matter is adjourned to 28.06.2004 in the interest of justice to enable the party to engage a representative and file reply'. On 28.06.2004, an application-Exhibit 6 was filed, along with Vakalatnama of Shri Mehulsinh Mehta, advocate by the

petitioners' authorised signatory. It is stated in the application that,

"The opponent above named most respectfully submits that adjudication of the present application involves complicated issues of law and facts. The opponents are not aware of the law and the procedure and therefore requested the Honourable Court to permit them to engage an advocate and defend their case in the interest of justice."

5. On this application an objection is raised, which is marked on the application (Exhibit 6) by a rubber stamp. The fact that a rubber stamp is got prepared shows that such objection is taken as a matter of course and is not taken in the facts of this particular case only. The rubber stamp reads thus,

"The person appearing for the opponents is a legal practitioner (advocate). In the original application a relief is sought for and objection is taken against such appearance. Hence Vakalatnama (authority) be rejected in the interest of justice."

6. The learned Judge has passed an order, on 29.06.2004, which is under challenge in these petitions. The case of the petitioners is that on 18.06.2004 when an adjournment was sought for, in presence of Shri S.B. Chaudhary, it was not objected to. This-not taking objection to an adjournment for engaging an advocate amounts to an implied consent on the part of the workmen and therefore, the objection which is raised on 28.06.2004 is of no consequence and the same could not have been taken into consideration and the permission ought to have been granted. Mr.Patel, the learned advocate relied upon the decision in the matter of Orissa Cement Limited Vs. State of Orissa & others, reported in 1995 II CLR 384 to support his contention that, 'once objection is not taken, it amounts to an implied consent, such implied consent can be gathered from the circumstances and conduct of the party'. The learned advocate pointing out the facts of the case before the Honourable High Court of Orissa submitted that there the employer had asked for time on the ground that his advocate was sick and was unable to attend the Court. At that point of time the workmen did not object to appearance of a legal practitioner and that fact of not taking objection was construed to be an implied consent on the part of the workmen and the High Court was pleased

to hold that the Labour Court was not right in not granting permission to the legal practitioner. The learned advocate pointed out the facts narrated in para 2 and the relevant discussion in para 9 of the judgement.

7. The learned advocate next relied upon a judgement of the High Court of Judicature of Bombay in the matter of Engineering Mazdoor Sabha, Bombay Vs. Meher (M.R.) (Industrial Tribunal, Bombay) and others, reported in 1966 I LLJ 580. There the employer was allowed to be represented by a lawyer at the commencement of hearing without objection. Whereas on a subsequent occasion appearance of the lawyer was objected to. The High Court was pleased to hold that the objection at a subsequent stage is not permissible. Besides, the High Court also held that absence of specific objection would be taken to be implied consent.

8. The learned advocate also relied upon a decision of Kerala High Court in the matter of Calicut Cooperative Milk Supply Union Vs. Calicut Cooperative Milk Supply Workers Union, reported in 1986 II LLJ 422 and a decision of the High Court of Judicature at Calcutta in the matter of Shiraz Golden Restaurant Vs. State of West Bengal and others, reported in 2000 II LLJ 1101. Last but not least the learned advocate also relied upon a decision of this Court (Coram: M.R. Calla, J.) in Special Civil Application No.8301 of 1995 dated 10.10.1995.

9. Mr.S.B. Chaudhary, President of Rashtriya Labour Union vehemently opposed these petitions and submitted that these petitions are filed only with a view to delay the proceedings before the Labour Court. He invited the attention of the Court to the averments made in the recovery application which is annexed at Annexure 'B' to one of the petitions. He submitted that the petitioner companies are acting in a manner, which is not only highly prejudicial but also oppressive and so on. But then when he was conveyed that the question involved in these petitions is only, 'as to whether the order passed by the learned Judge on an objection application in the recovery application dated 29th June 2004, is required to be upheld or quashed and set aside', he restrained himself from making general submissions/ allegations. He submitted that the respondent workmen, have objected to the appointment of a lawyer right from the beginning, that is, filing of the recovery application, wherein in para 9 (prayer clause 'E') it is prayed that an order be passed under section 36(3) and 36(4) of the Act, not permitting any legal practitioner in any manner, to which workmen do not consent to and take serious objection. He

submitted that besides on 28.06.2004 when application (Exhibit 6) was given and Vakalatnama was filed, objection was recorded on both these documents. He submitted that the order passed by the learned Judge is absolutely just and proper being in accordance with law, in consonance with the provisions of 'the Act' contained in section 36, more particularly subsections (3) and (4). He further submitted that subsection (2) of section 36 provides the category of persons, by whom an employer can be represented in the proceedings under the Act. He emphasised that a 'legal practitioner' is specifically barred under subsec.(3) of section 36 of the Act. The only exception which carved out to subsection (3) is by subsection (4). Subsection (4) of section 36 of the Act provides for consent of the other side. Meaning thereby that only with the consent of the other side to the proceeding and with the leave of the Labour Court, Tribunal or National Tribunal, a legal practitioner can be allowed to represent. So the 'consent' of the other side and 'leave of the Court' are the condition precedent for a party to be represented by a legal practitioner under this Act. In support of this contention he referred to the following judgements:

(i) In the matter of J.B. Transport Company & others Vs. Shankarlal @ Mavaram Nathuji Patel, reported in 1999 (3) GLR 2019.

(ii) Decision dated 09.12.1998 of the Division Bench of this Court (Coram: C.K. Thakker & A.L. Dave, JJ.) in the matter of J.B. Transport Company & others Vs. Shankarlal @ Mavaram Nathuji Patel in Letters Patent Appeal No.1101 of 1998 arising from the aforesaid decision of the learned Single Judge.

(iii) Decision dated 21.04.2003 of this Court (Coram: H.K. Rathod, J.) in the matter of Sports Authority of Gujarat Vs. Mahendra Muljibhai Parmar in Special Civil Application No.119 of 2003.

(iv) Decision of Delhi High Court in the matter of Prasar Bharathi Broadcasting Corporation of India Vs. Suraj Pal Sharma & another, reported in 1999 I LLJ 184.

(v) Decision in the matter of Parvathi Mills, Kollam, Unit of NTC Ltd., Vs. Quilon Hotel & Tea Shop Workers Union (INTUC) Kollam and another, reported in 2000 II LLJ 530.

(vi) Decision of Rajasthan High Court in the matter of Project Director, Agriculture and Soil Survey Vs.

Surendra Singh and another, reported in 1998 Lab. I.C. 2983, and

(vii) Decision of Rajasthan High Court in the matter of Paradip Port Trust Vs. Their Workmen, reported in 1976 II LLJ 409.

10. Mr.Chaudhary reiterated that in light of the provision of subsection (3) of section 36 of the Act, a party does not have a right to be represented by a legal practitioner in any conciliation proceeding under this Act or any proceeding before the Court. He submitted that, that being the position of law and in view of the fact that the conditions provided under subsection (4) of section 36 of the Act are not fulfilled, the learned Judge is right in passing the order under challenge and the same is not required to be interfered with by this Court, more particularly when the sole idea is to delay the proceedings before the Labour Court. He also submitted that the workmen are in a very pathetic condition as they are not paid their wages for the period from 01.12.2003 to 29.02.2004 for which they had worked. Today they are in starving condition. They are 124 in number and various proceedings including criminal cases are filed against them.

11. Mr.S.B. Chaudhary though placed several decisions enlisted hereinabove is not able to point out any decision having similar facts, namely, at one stage of the proceedings objection was not raised and thereafter objection was raised. As against that in the decisions, cited by the learned advocate for the petitioner the facts are almost identical.

The law is as provided in subsection (3) of section 36 of the Act, which is as under:

> "No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a Court."

Mr.Chaudhary submitted that by virtue of this provision a legal practitioner cannot represent in any proceeding under this Act in any proceedings before a Court. At this juncture, Mr.Patel, the learned advocate pointed out the definition of the term 'Court' in clause (f) of section 2 of the Act, wherein it is provided that, "Court" means 'a Court of Inquiry constituted under this Act' and for the constitution of Court, provision is made in section 6. He therefore, submitted that the

provisions of subsec.(3) of section 36 have no application to the fats of this case. The facts of the case will be governed by provisions of subsec.(4) of section 36 of the Act. (emphasis supplied)

12. Subsec.(4) of section 36 provides for two things as conditions precedent, namely, (i) consent of the other parties to the proceedings, and (ii) leave of the Labour Court or Tribunal or National Tribunal as the case may be. In the considered opinion of this Court, in the present case the issue is not as to whether, 'a legal practitioner can appear or not' in fact the question is as to whether, 'in the facts of the case when an application was given on 18.06.2004 on behalf of the petitioner, seeking an adjournment on the ground that, "as the matter involves question of law, time may be granted to engage a lawyer and file reply" in the presence of Shri Chaudhary and in his presence the Court was pleased to adjourn the matter by saying that "subject to the provisions of the Industrial Disputes Act for engaging a representative and to file reply, the matter is adjourned in the interest of justice," then not taking of any objection by Shri S.B. Chaudhary on 18.06.2004, whether should be considered to be an implied consent or not. (emphasis supplied)

On careful consideration of the facts of the case in light of the rival submissions this Court is of the opinion that the decisions cited by the learned advocate of various High Courts, namely, Orissa, Bombay, Kerala and Calcutta are directly on the point. Orissa High Court in its decision of Orissa Cement Limited Vs. State of Orissa & others, 1995 II CLR 384 (supra) has taken a view that, 'consent is not required to be an express consent', 'it can be an implied consent', which can be ascertained from the circumstances and conduct of the party'. What is required to be considered thereafter is as to whether, once such an implied consent is given can be withdrawn by the party at a later stage or not. Mr.Patel, the learned advocate submitted that such consent cannot be withdrawn as held by this this Court (Coram: M.R. Calla, J.) in Special Civil Application No.8301 of 1995 (supra), wherein it is observed that,

> ".. .. It is trite law that the consent in such cases, once given by a party to the benefit of the other party to be represented by a lawyer, cannot be withdrawn. .. .."

13. In view of the aforesaid discussion this Court holds that it is clear from the facts of the case that

Shri S.B. Chaudhary who did not object to application (Exhibit 4) dated 18.06.2004, impliedly consented to the reason for which adjournment was sought for and that reason was, to engage an advocate and file a reply. The reason, to engage an advocate,' was the first and filing a reply was the second. In that view of the matter, accepting the view taken by various High Courts in the aforesaid decisions, this Court holds that there was an implied consent on the part of Mr.S.B. Chaudhary on 18.06.2004. Further, agreeing with the view taken by this Court in Special Civil Application No.8301 of 1995, 'the consent once given cannot be withdrawn', the order passed by the learned Judge is quashed and set aside. The petitions are allowed. Rule is made absolute. No order as to costs.

No order for cost is passed by taking into consideration the fact that the respondent workmen are represented by the Union President, who bona fidely to the best of his ability presented the case of the respondent workmen.

(Ravi R. Tripathi, J.)

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